Criminal Revision No. 88 OF 2003

Trilok Chand ---------- Revisionist

Versus

State of Uttaranchal -- Respondent

Hon'ble M.M.Ghildiyal, J.

By means of this revision the revisionist has challenged the order dated 03.06.2003 passed by the Sessions Judge, Pithoragarh rejecting the application filed by the revisionist under section 311 Cr.P.C. for summoning the defence witnesses in Sessions Trial no. 29 of 2002.

Heard Sri Lokendra Dobhal learned counsel for the revisionist and learned A.G.A.

The facts of the case are that crime case no. 27 of 2002 was registered at P.S.Jhoolaghat district Pithoragarh under section 302 I.P.C. against the revisionist on the basis of first information report dated 31.8.2002. After investigation chargesheet was submitted and the sessions trial no. 29 of 2002 is going against the revisionist. The prosecution examined prosecution witnesses. On 24.5.2003 an application under section 311 Cr.P.C. was moved by the revisionist for summoning some of the prosecution witnesses on the ground that they are independent witnesses. Their statements under section 161 Cr.P.C. have already been recorded by the Investigating Officer. The said application was rejected by the learned trial court vide order dated 26.5.2003. On 3.6.2003 application under section 311 Cr.P.C. was moved by the revisionist for summoning the witnesses who were the prosecution witnesses but the prosecution had not examined them. This application was moved for summoning these witnesses as defence witnesses. On the same date the learned trial court vide order dated 03.06.2003 summoned witnesses Atul Bhatt and rejected the application in respect of summoning of defence witnesses Dr. Ghanshyam Tiwari, Uttam Singh, Atul Bhatt and Dr. Vijai Vilas Dubey. The learned trial court while rejecting the application has held that since Dr. Vijai Vilas Dubey has already been examined as prosecution witness he cannot be summoned as a defence witness. So far as Atul Bhatt is concerned the learned trial court has summoned Atul Bhatt. However, in

respect of Dr. Ghanshyam Tiwari and Utttam Singh the learned trial court has held that an application under section 311 Cr.P.C. was moved earlier praying that witnesses. Dr. Ghanshyam Tiwari and Uttam Singh who were prosecution witnesses may be summoned. That application was rejected.

Section 311 Cr.P.C. gives the power to the court to summon material witnesses or examine any person in attendance. This section is quoted hereunder:-

> "Any Court may, at any stage of any inquiry, trial or other proceedings under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

It is well settled law that the Court has power to recall any witness or witness already examined or to summon any witness even if the evidence of both sides is closed. The power to summon as witness or to recall or re-examine is given to the Court at any stage of inquiry, trial or other proceedings where essential to the just decision of the case. The discretion vests in the Court. The discretion is to be exercised judiciously and not arbitrarily. In the present case from the impugned order it is clear that statement of the revisionist under section 313 Cr.P.C. was recorder. In case the revisionist after recording statement under section 313 Cr.P.C. moves an application for summoning certain persons as defence witnesses the Court should not have summarily rejected the application on the ground that earlier application was moved by the revisionist under section 311 Cr.P.C. to summon these persons as prosecution witnesses. The earlier application moved by the revisionist u/s 311 Cr.P.C. was rightly rejected by the learned trial court since it was the discretion of the prosecution to come to the decision to examine prosecution witnesses. It is not necessary for the prosecution to examine all the witnesses, the names of whom are mentioned in the list. However, after recording the statement of the accused u/s 313 Cr.P.C. the Court cannot summarily reject the application of the accused u/s 311 Cr.P.C. for summoning as defence witnesses only on the ground that

since the earlier application moved by the accused to summon these witnesses was rejected.

For the reasons stated above the Revision is allowed order dated 3.6.2003 is quashed. Learned Sessions Judge, Pithoragarh is directed to decide the application of the revisionist under section 311 Cr.P.C. for summoning of defence witnesses in accordance with law.

(M.M.Ghildiyal, J.)

September 04, 2003
MPS